

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

Nos. 08-3894/09-1304

United States of America,

Appellee,

v.

Sebastian Joseph Feist,

Appellant.

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* Appeals from the United States

* District Court for the

* District of North Dakota.

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* [UNPUBLISHED]

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Submitted: September 29, 2009

Filed: October 2, 2009

Before WOLLMAN, RILEY, and SMITH, Circuit Judges.

PER CURIAM.

In these consolidated appeals, Sebastian Joseph Feist, a federal inmate incarcerated in Colorado, challenges the district court's denial of his petition for a writ of audita querela, as well as the court's order that he pay the appellate filing fee in installments in accordance with the Prison Litigation Reform Act (PLRA).

Feist was sentenced to life in prison in October 1976 after he pleaded guilty in the District of North Dakota to armed bank robbery, murder, and firearms charges. The Parole Commission has denied parole each time Feist has been considered. In April 2008 Feist filed a petition for a writ of audita querela, arguing that the Commission was required to set a release date, and asking for release. We agree with

the district court that it could not grant relief. A writ of audita querela is not available where other cognizable remedies exist, see United States v. Richter, 510 F.3d 103, 104 (2d Cir. 2007) (per curiam), and the proper avenue for the relief Feist seeks is 28 U.S.C. § 2241, as his claim is a challenge to the execution of his sentence, see Bell v. United States, 48 F.3d 1042, 1043 (8th Cir. 1995). The district court correctly found that it lacked jurisdiction to consider a section 2241 petition brought by Feist. See United States v. Chappel, 208 F.3d 1069, 1069-70 (8th Cir. 2000) (per curiam) (§ 2241 petition must be brought in district of incarceration, District of Columbia, or district in which Bureau of Prisons maintains regional office).

We conclude, however, that the filing-fee provisions of the PLRA are inapplicable here. Cf. Malave v. Hedrick, 271 F.3d 1139, 1139-40 (8th Cir. 2001) (per curiam) (PLRA is inapplicable to habeas corpus actions). We thus agree with Feist that the district court erred in imposing a payment schedule to collect the appellate filing fee.

Accordingly, in No. 08-3894 we affirm the district court's judgment denying audita querela relief. In No. 09-1304, we grant Feist's pending motion and vacate the district court's order for payment of the filing fee, and we direct that any part of the fee Feist has paid be returned to him.
